

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

DAVID MIZELL AND)
KYONG MIZELL) Case No. 18-CV-01706-HEA
)
Plaintiffs,)
)
vs.)
)
PROFESSIONAL TRANSPORTATION)
SOLUTIONS, LLC)
)
Defendant.)

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR A TEMPORARY RESTRAINING ORDER**

COME NOW Plaintiffs, David Mizell and Kyong Mizell, for their Supplemental Memorandum in Support of their Motion for a Temporary Restraining Order, and state:

Plaintiffs are in the process of submitting a Supplemental Declaration from Christein Stith identifying other property items on the shipment which are irreplaceable, including the personal papers of the Plaintiffs, with many documents containing their social security numbers, a lifetime of personal photographs of the Mizell family, the military medals and the military uniform of David Mizell, David's wheelchair and David's porta potty. David had periods when he was disoriented before the shipment, and those periods of disorientation were more frequent after he lost the use of the BiPap machine. David is currently scheduled for additional heart surgery on Tuesday, October 16, 2018, at St. Vincent's Hospital in Jacksonville, Florida. Attached hereto as Exhibit A is the Supplemental Declaration (unsigned) of Christein Stith.

Christein Stith is also currently in the hospital, but will be out tomorrow and will sign the Supplemental Declaration, which will be filed by October 15 or 16, 2018.

Injunctive relief is appropriate when the Plaintiff establishes (1) the likelihood of irreparable injury in the absence of such an injunction and, (2) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation plus a balance of hardships tipping decidedly in the Plaintiffs' favor. Wisdom Import Sales Co. vs. Labatt Brewing Co., Ltd., 339 F. 3d 101,108 (2d Cir. 2003); TCPIP Holding Co., Inc. vs. Haar Communications, Inc., 244 F. 3d 88, 92 (2d Cir. 2001). A preliminary injunction was issued in Wisdom Import Sales Co. vs. Labatt Brewing Co., Ltd.

Irreparable harm is defined as a certain and imminent harm for which a monetary award does not adequately compensate. Wisdom Import Sales Co. vs. Labatt Brewing Co., Ltd., 339 F. 3d 101,113 (2d Cir. 2003).

The BiPap machine, wheelchair and porta potty are items which David Mizell needs now for his immediate medical needs. A monetary award six months to a year from now will not compensate and he does not have the ability to replace those items in the interim.

The photographs, military medals, military uniform and personal papers, including military papers, are irreplaceable.

For these reasons, and for the reasons stated in the Motion for a Temporary Restraining Order, Plaintiffs respectfully request a Temporary

Restraining Order to maintain the status quo and prevent the Defendant from selling the property that was shipped from Virginia to Florida, and is currently in the possession of the Defendant.

/s/ David M. Duree
David M. Duree, MBE 21003
David M. Duree & Associates, P.C.
312 South Lincoln Avenue
P.O. Box 1416
O'Fallon, IL 62269
Tel: 618-628-0186
Fax: 618-628-0259
Email: law@dmduree.net
Attorney for Plaintiffs, David and Kyong Mizell